

(January 5, 2004)

Appendix to the Special Provisions Disputes Review Board

Scope of Work

The Scope of Work of a Board includes, but is not limited to, the following items of work:

Board Consideration of Disputes or Claims: Upon request by either the State or the Contractor to review a dispute, the Board shall convene to review and consider the issue. Both the State and the Contractor shall be given the opportunity to present their evidence at these meetings. The time and location of Board meetings shall be determined by the State, Contractor, and Board. It is expressly understood that the Board members are to act impartially and independently in the consideration of facts and conditions surrounding any written appeal presented by the State or the Contractor and that the recommendations concerning any such appeal are advisory.

Procedures: Prior to any hearing involving a contract dispute, the Board will meet with the State and the Contractor to establish the rules and procedures that will govern the Board's participation in the Project as set forth in the Special Provisions of the construction contract. In establishing the rules and procedures, the parties may consider the Suggested Administrative Procedures included in this Appendix. The Board may establish any internal rules and procedures not covered in the Agreement with the State and the Contractor. The Board's recommendations resulting from its consideration of a dispute shall be furnished in writing to the State and the Contractor. The recommendations shall be based on the construction contract provisions and the facts and circumstances involved in the dispute.

Furnishing Documents: The State shall furnish to the Board three copies of the contract and other documents, which are or may become pertinent to the activities of the Board. The Contractor shall furnish to the Board three sets of documents, which are or may become pertinent to the activities of the Board, except documents furnished by State.

Construction Site Visits: The Board members shall visit the project site to keep abreast of construction activities and to develop a familiarity of the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed between the State, the Contractor, and the Board.

Suggested Administrative Procedures

Objective

The principal objective of the Board is to assist in the resolution of disputes, which would otherwise be likely submitted to litigation processes. If this objective is achieved, such disputes can be resolved promptly, with minimum expense, and with minimum disruption to the administration and performance of the work. It is not intended for the State or the Contractor to default on their normal responsibility to amicably and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the mere existence of the Board will encourage the State and the Contractor to resolve potential disputes without resorting to this appeal procedure. But when a

dispute which is serious enough to warrant the Board's review does develop, the machinery for prompt and efficient action will already be in place.

Responsibility of the Board

Render findings and recommendations on disputes between the Contractor and the State arising from the construction contract. Primarily, the Board will consider claims and disputes involving interpretation of the Plans and Specifications, delays, acceleration of the work, scheduling, classification of extra work, changed conditions, design changes, and the like. During its regular visits to the job site, the Board will encourage the settlement of differences at the job level.

The Board will refrain from officially giving any advice or consultative services to either party. The individual members will act in a completely independent manner and will have no consultative or business connections with either party.

During routine meetings of the Board as well as during formal hearings, Board members should refrain from expressing opinions on the merits of statements on matters under dispute or potential dispute. Opinions of Board members expressed in private sessions should be kept strictly confidential.

Normally, the Board member selected by the first two will act as Chairman for all activities. However, this post may be delegated to another member from time-to-time.

Regular Construction Progress Meetings

All regular meetings will be held at or near the job site. The frequency of regular meetings will be set by agreement of the Board, the Contracting Agency and the Contractor, consistent with the construction activities and the matters under consideration and dispute. Each meeting will consist of a round table discussion and a field inspection of the work being performed on that contract. The round table discussion will be conducted by a member of the State's staff and will be attended by selected personnel from the State and the Contractor. The agenda will generally be as follows:

- Meeting opened by Chairman of the Board.
- Remarks by the State 's representative.
- A description by the Contractor of work accomplished since the last meeting, the current status of the work, schedule-wise, and a forecast for the coming period.
- An outline, by the Contractor, of potential problems and a description.
- An outline, by the State's Project Engineer, of the status of the work as the Project Engineer views it.
- A brief description, by the Contractor or the State, of potential claims or disputes, which have surfaced since the last meeting.
- A summary, by the Contractor, the State or the Board, of the status of past disputes and claims.

The State will prepare minutes of all regular meetings and circulate them for revision and approval by all concerned.

The field inspection will cover all active segments of the work, the Board being accompanied by both State and Contractor personnel.

Handling of Written Appeals

When the Board receives a written appeal, it shall first reach agreement with the parties on a time to conduct the hearings. The decision shall be tempered by the desires and needs of the State and the Contractor. If the matter is not urgent, it may be scheduled for the time of the next regular visitation to the project. For an urgent matter, the Board should meet at its earliest convenience.

The Board may also request that written documentation concerning the dispute be sent to each individual member for study before the hearing begins. A party furnishing any written documentation to the Board must furnish copies of such information to the other party before the hearing begins.

Normally, the hearings would be conducted at the job site. However, any location, which would be more convenient and still provide all required facilities and access to the necessary documentation, would be satisfactory. Private sessions of the Board may also be held at a location other than the job site.

For hearing on disputes, the third member or one of the other members designated by the third member of the Board will act as Chairman. The State and the Contractor shall have a representative at all hearings. The claimant will discuss the dispute followed by the other party. Each party will then be allowed one or more rebuttals until all aspects are thoroughly covered. Each time a person testifies, the Board members may ask questions, seek clarification, or request further data. The Board may request from either party documents or information that would assist the Board in making its findings and recommendations, including, but not limited to, documents used by the Contractor in preparing the bid for this project. A refusal by a party to provide information requested by the Board may be considered by the Board in making its findings and recommendations. In large or complex issues, one or more additional hearings may be necessary in order to consider all the evidence presented by both parties.

During open hearings, no Board member should express an opinion concerning the merit of any facet of the dispute. By the same token, all Board deliberations should be conducted in private, with all interim individual views kept strictly confidential.

After the hearings are concluded, the Board shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent contract provisions and facts and circumstances involved in the dispute.

The Board should make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.

Although both parties should place weight upon the Board's recommendations, they are not binding. Either party may appeal a recommendation to the Board for reconsideration. However, if the Board's recommendations do not resolve the dispute, all records, and written recommendations, including any minority reports, may be admissible as evidence in any subsequent litigation.

Miscellaneous

It is not desirable to adopt hard and fast rules for the functioning of the Board. The entire procedure should be kept flexible so that it can adapt to changing situations. The Board should initiate, with the other parties' concurrence, new rules or modifications to old ones whenever this is deemed necessary.